

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
DUBLIN DIVISION

NATHAN SMITH,	)	
	)	
Petitioner,	)	
	)	
v.	)	CV 319-024
	)	(Formerly CR 309-009)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

---

**ORDER**

---


After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, and **DENIES** Petitioner's amended motion filed pursuant to 28 U.S.C. § 2255. (Doc. no. 3.) Because Petitioner's amended motion supersedes his original as stated in the Court's March 26, 2019, Order, (doc. no. 2), the Court **DENIES AS MOOT** Petitioner's original motion filed pursuant to 28 U.S.C. § 2255. (Doc. no. 1.)

Further, a federal prisoner must obtain a certificate of appealability ("COA") before appealing the denial of his motion to vacate. This Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a) to the Rules Governing Section 2255 Proceedings. This Court should grant a COA only if the prisoner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

For the reasons set forth in the Report and Recommendation, and in consideration of the standards enunciated in Slack v. McDaniel, 529 U.S. 473, 482-84 (2000), Petitioner has failed to make the requisite showing. Accordingly, the Court **DENIES** a COA in this case.<sup>1</sup> Moreover, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Accordingly, Petitioner is not entitled to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

Upon the foregoing, the Court **CLOSES** this civil action and **DIRECTS** the Clerk to enter final judgment in favor of Respondent.

SO ORDERED this 11<sup>th</sup> day of February, 2020, at Augusta, Georgia.



J. RANDAL HALL, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

---

<sup>1</sup>“If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.” Rule 11(a) to the Rules Governing Section 2255 Proceedings.